

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 432 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NARBAT ALIAS NAGO KHIMA KHISTARIA MER

Versus

STATE OF GUJARAT

Appearance:

HL PATEL ADVOCATES for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/11/1999

ORAL JUDGEMENT

The petitioner herein, by this petition, challenges the order of externment passed by Sub-Divisional Magistrate, Porbandar on 24.2.99 in exercise of powers vested in him under Section 56 of the Bombay Police Act, 1951 externing the petitioner for a period of 2 years from the Districts of Porbandar, Junagadh, Jamnagar, Rajkot City and Rajkot Rural, after taking into consideration various factors recorded in the

order of externment.

2. The facts of the case in brief are that the petitioner was served with a notice dated 1.6.98 under Section 59 of the Bombay Police Act, for showing cause why orders under Section 56(A)(B) of the Bombay Police Act, externing him for a period of 2 years from the districts of Porbandar, Jamnagar, Junagadh, Rajkot City and Rajkot Rural and Amreli districts may not be passed, as proposed. The notice contained allegations to the effect that the petitioner was engaged habitually, in committing offences against person and property, that he keeps in his possession illicit weapons, that he abuses and assaults persons who obstruct his illegal activities, that he and members of his gang are engaged in eve teasing and that the petitioner's activities have resulted into a atmosphere of terror in the area causing difficulties for the public at large, in pursuing their day to day activities. The Notice stated further that the details of the six offences registered against the petitioner which can be narrated as under:-

1. Kamlabaug Police Station Crime Register No. 131/94 I.P.C. Section 394, 34, 504 dated 9.7.94.
2. Bagwadar Police Station Crime Register No. 11/96 I.P.C. Section 302, 201 dated 1.12.96.
3. Udhyognagar Police Station Crime Register No. 9/95 B.P.Act Section 135 dated 29.4.95.
4. Udhyognagar Police Station Crime Register No. 10/96 B.P.Act Section 122 C dated 12.8.96.
5. Udhyognagar Police Station Crime Register No.40/94 Prohi. Section 66(1)B, 85-1-0 dated 27.12.94.
6. Ranavav Police Station Application No. 30/96 C.K.23/96 dated 26.12.96 C.R.P.C. Section 107, 151, 116 (3).

The notice stated further that because the petitioner is engaged in the activities stated above, the witness feel insecure about their person and property and out of fear, are not prepared to depose against the notice i.e. the petitioner. The notice was recieved by the petitioner on 23.2.99 just one day prior to the passing of order of externment as per the statement made at the Bar by Mr.Patel.

3. After the notice, the Sub-Divisional Magistrate, Porbandar passed an order of 24.2.99 externing the petitioner for 2 years from the Districts stated above. The Authority held that charges under Section 56 (A) & (B) are proved against the petitioner and therefore order was necessary. The order is produced at Annexure B. A perusal thereof indicates that the externing Authority took into consideration the six offences registered against the petitioner. The Offences, which are considered, are punishable under Section 94, 334, 504, 302 and 201 of the IPC as well as under Section 135 & 122 of the Bombay Police Act. The Authority also considered that surety of good conduct has been taken from the petitioner. The Authority concluded that involvement of the petitioner in offences punishable under Chapter 12, 16 & 17 of the IPC is established. The petitioner has continued his activity of administering threat and intimidation to innocent persons for extorting money and therefore there is reason to believe that public at large is not prepared to approach the authorities out of fear of the petitioner. After recording the reasons to the effect that, if the petitioner is not externed from the contiguous districts, the petitioner may pursue his illegal activities by staying in such districts, by means of speedy transport and communication and therefore he was ordered to be externed from the districts stated above.

4. Aggrieved by the said order, the petitioner preferred an appeal to the Government as provided under Section 60 of the Bombay Police Act and the Appellate Authority after considering the contentions raised, came to a conclusion that the appeal did not merit allowance and the same was therefore dismissed confirming the order of the Externing Authority.

5. Mr. Patel has raised multi-fold contentions which are also raised in the petition. He submitted that the externment orders indicate that the Authority has exercised powers under Section 56-A as well as 56-B. No separate subjective satisfaction is recorded in respect of the 2 provisions and therefore the order would be vitiated for the reason that what facts influenced the decision making authority for which the provision is not disclosed. He further submitted that certain offences which are considered by the Externing Authority do not fall within Chapter 12, 16 or 17 of the iPC and therefore the order is bad in law.

6. Mr. Patel contended that if a comparative study of the notice and the externment order is made, it is clear

that the Externig Authority has taken into consideration an offence registered against the petitioner which did not form part of the notice, namely Udhyognagar Police Station Cr.No. I-42 of 1998 under Section 307 and 447 of the IPC read with Section 135 of the Bombay Police Act. The principles of natural justice are therefore violated. Mr.Patel submitted further that the subjective satisfaction about the likelihood of the witness not being ready to come forward and depose against the petitioner is vitiated for the reason that complaints are made & offences have been registered in this regard and therefore there is no question of Public at large being afraid of the petitioner and being not ready or prepared to depose against the petitioner. Mr.Patel's next contention was that the details of statement of the witness whose identity has not been disclosed are not given and therefore the petitioner had no opportunity of meeting the allegations that may have been made by witness. Lastly Mr.Patel submitted that the order of the Externig Authority as well as the Appellate Authority are non-speaking. They have not recorded reasons for the period of externment. Mr.Patel has pressed into service certain decisions in support of his argument.

7. Mr.Joshi, Ld. Additional Public Prosecutor appearing for the respondents submitted that the order in question is not expected to be a detailed and reasoned order, as is the case in judicial orders. It is an administrative order and if the allegations against the petitioner are stated generally in the notice it cannot be said that the principles of natural justice is violated or that the notice is vague. As regard the other grounds Mr.Joshi sbumitted that the authority concerned has not based the order on any extreneous factors and the subjective satisfaction therefore cannot be assailed by the petitioner as is attempted to be done and the petition may therefore be dismissed.

The glaring feature of the case on hand is that the Externig Authority has taken into consideration certain offences which would not be covered by Chapter 12, 16 or 17 of the IPC. They are Udhyognagar Police Station C.R.No. II 9/95 being offence under Section 135 of the Bombay Police Act, (2) Udyognagar Police Station Cr.No. II 10/96 for offence under Section 122 of the Bombay Police Act., (3) Udhyognagar Police Station Cr.No. II 40/94 under the Bombay Prohibition Act and (4) Ranabaug Police Station proceedings under Section 107 of the Cr.P.C. This reflects non-application of mind.

8. Another feature that attracts attention is that

the Externaling Authority while passing the externalment order has taken into consideration registration of an offence at Udhaynagar Police Station being Cr.No.I 42 of 1998 under Section 307 and 447 of the IPC read with Section 1354 of the Bombay Police Act, whereas this offence does not find place in the notice at Annexure A. This indicates that the externaling authority has taken into consideration extraneous material for which no notice is given under Sec.59 of the Bombay Police Act, 1951.

9. Section 56 of the Bombay Police Act if considered, runs as under:-

"Whenever it shall appear in areas for which a Commissioner has been appointed under section 7 to the Commissioner and in other area or areas to which State Government may, by notification in the Official Gazette extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment to any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regard the safety of their person or property, or (c) that an outbreak of epidemic disease is likely to result from property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction by such route and within such time as the said officer may prescribe and not to enter or return to the said area, from which he was directed to remove himself."

It is therefore clear that for passing an order under Section 56(B) there must be reasonable grounds for believing that the Externee is engaged or is about to be engaged in commission of offence involving force and violence or in offence under Chapter 12, 16 or 17 of the IPC or is engaged in abetment of any such offence.

10. If the offence considered by the Authority registered at Udhogynagar Police Station Cr.No. II 9-95, II 10-96 and III 40-94 are taken into consideration, they cannot be said to be falling within Chapters 12, 16 or 17 of the IPC and therefore the order could not have been passed under Section 56(b) by the Externing Authority on this basis.

11. An attempt is made by Mr.Joshi to crease out this lacuana by arguing that the Externing Authority may have passed the order under Section 56(a). As such order can be passed where the movements or acts of any persons are causing or calculated to cause alarm danger or harm to person or property. It is not possible to accept this argument advanced by Mr.Joshi for the reason that the order does not indicate as to what factors were considered by the Externing Authority for coming to a conclusion that the case of externee fell within Section 56(a) or 56(b) of the Bombay Police Act. No separate reasoning or grounds are recorded and therefore it is very difficult to ascertain as to what factors were considered and what factors influenced the Externing Authority while it came to the conclusion that the case of the externee fell within Section 56(a) or 56(b) of the Bombay Police Act. Therefore the order cannot be sustained.

12. The order suffers from another defect i.e. that the Externing Authority has taken into consideration a factor which were not put to the externee in the notice viz. case registered at Udyognagar Police Station C.R.No. I-42/98. The externee therefore had no opportunity of meeting with that aspect and therefore the order would stand vitiated as requirement under Section 59 of the Bombay Police Act cannot be said to have been complied with. In this regard, a decision of the Bombay High Court in the case of Gurunath Atmaram Devalikar V/s. Shri PAB Prasad reported in 1988 Criminal Law Reporter (Maharashtra) Page 507 may be considered. The Division Bench of the Bombay High Court observed that an additional case having been mentioned in the order of externment would deprive the externee of his right of giving effective reply to the said notice and the order therefore would stand vitiated.

13. The impugned order is alleged to be suffering from one more defect i.e. consideration of a chapter case with Ranabaug Police Station vide Chapter Case No. 23 of 1996. This has been held to be an extraneous material by the Bombay High Court in the above referred decision of Gurunath Atmaram Devalikar (Supra). In that case 2 chapter cases were mentioned in the notice. It was held that a chapter case falls outside the purview of Section 56 of the Bombay Police Act and the Externment Authority, therefore, was held to have relied upon extraneous material and on that ground the order of externment was set aside.

In view of facts of the matter, the argument of Mr. Patel that the order suffers from multiple defects, has to be accepted.

14. To conclude, the order has to be set aside for the reason that the Externment Authority has taken into consideration extraneous factors like filing of Chapter Case which cannot form basis for an order under Section 56 of the Bombay Police Act. Further, the Externment Authority has considered a case about which notice has not been given while passing the externment order and requirement of Section 59 of the Bombay Police Act is therefore, violated. The order is bad in law since the offences at C.R.No.II 9/96, C.R.No.II 10/95 & III 40/94, considered by the Externment Authority as offences falling under Ch. XII, XVI, or XVII of I.P.C., in fact do not fall under those chapters, which reflects non-application of mind. The petition, therefore, deserves to be allowed and the same is allowed. The impugned order of externment and the order passed in appeal confirming the externment are hereby quashed and set aside. Rule made absolute. No costs.

(A.L.Dave, J)

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